

American Recovery and Reinvestment Act (ARRA) Workshop



DAVIS-BACON ACT REQUIREMENTS

STATE REVOLVING FUND

Agenda



- Background and Overview
- Compliance with Davis-Bacon
- Common Problems and Concerns
- Common Questions
- Best Practices
- Additional Resources
- Questions

Davis-Bacon and Related Acts: Background & Overview



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

Overview



- Section 1606 - Prevailing Wage Requirement
 - SRF program hasn't had Davis-Bacon since 1996
 - ✦ Incorporates federal prevailing wage under Davis-Bacon Act
- EPA issued own "Terms and Conditions"
 - Incorporates provisions of Davis-Bacon Act
 - ✦ 29 CFR part 1, 3 and 5

Overview



- Applies to:
 - All SRF projects with ARRA funds.

Specifically, Davis-Bacon covers:

- Agreements/contracts/subcontracts over \$2,000 for:
 - ✦ Construction,
 - ✦ Alteration (including painting and decorating), or
 - ✦ Repair
- All laborers and mechanics employed by contractors and subcontractors

Overview: Davis-Bacon Act



- Applies only to certain workers employed by contractors and subcontractors:
 - Laborers/Mechanics: Job duties are physical and manual in nature
 - Watchmen or guards (under certain conditions)
 - Working foremen (under certain conditions)
- Does NOT apply to the following:
 - Administrative/clerical, superintendents, supervisory foremen
 - Engineers, site inspectors, computer programmers
 - City or utility workers of any kind

Overview: Davis-Bacon Act



- Only applies to construction at the “Site of Work”, which has been defined as only the physical place where the construction will remain.
- Work done off-site will not be covered nor will employees who work off-site.
- All covered employees shall be paid weekly.

Overview: Responsibilities



Entity	Responsible for
Contractors and Subcontractors	<ul style="list-style-type: none">• Posting wage poster and general determination at job site.• Paying prevailing wages and submitting payrolls to State of Iowa/IFA.• Ensuring subcontractors are paying prevailing wages and submitting payrolls.
City/Loan Recipient and Consulting Engineer	<ul style="list-style-type: none">• Requesting wage determination from IFA using form on IFA's website.• Inserting DB language and wage determination into all bid solicitations and subsequent contracts or change order agreements.• Coordinating on-site interviews with IFA.
State SRF Program (Iowa Finance Authority)	<ul style="list-style-type: none">• Collecting and maintaining payroll records & verifying compliance.• Coordinating on-site interviews with projects.
EPA	<ul style="list-style-type: none">• Ensuring prevailing wages are being paid and federal guidance.

Compliance With Davis-Bacon



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

What Does The State Have To Do?



- Completed before February 17th, 2010
 - Provide wage determinations.
 - Review all contracts to make sure front-end docs included.
 - ✦ For prime contract and all subcontracts
- Ongoing
 - Compliance verification:
 - ✦ Ensure contractor and subcontractors are following wage rate requirements and contract provisions.
 - ✦ Collecting weekly payrolls from contractors and subcontractors.
 - ✦ Ensure D-B poster and wage determination are posted at work site
 - ✦ Coordinating on-site interviews
 - ✦ Coordinating with CDBG project staff/grant administrators

Contract Provisions



- Wage Determinations and DBA Contract Clause
 - Must be in bid documents and solicitations
 - All contract documents or addenda/change orders
- GSA debarment list
 - Contractor/subcontractor must certify eligibility to be awarded federal government contracts
 - State of Iowa has contractors certify eligibility per EPA/ARRA grant conditions.
 - Certification form included in front-end documents put into bid specs by consulting engineer.

Contract Provisions



All contracts must include exact language about:

- Minimum wages (prevailing wage)
- Withholdings
- Payroll and basic records
- Apprentice and trainee requirements
- Compliance with Copeland Anti-kickback Act
- Certifications of contractor eligibility
- CWHSSA as applicable (overtime pay)

Wage Determinations



- Wage determinations are frequently modified.
- Consulting engineer will contact IFA to receive correct determination to include in bid solicitations and contracts
 - ✦ 10-day Rule (based on bid close date)
 - ✦ 90-day Rule (based on contract award)
- As a general rule, the wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract. They are said to be “locked-in”.
- Contract modification may be required if contract:
 - Does not include a wage determination, or
 - Includes an incorrect wage determination

Wage Determination

- Confirm modification date to make sure it's most current.
- Confirm project type matches work being done.
- May fall under different construction type.
- Multiple determinations may apply in special circumstances.

GENERAL DECISION: KS20080018 10/16/2009 KS18

Date: October 16, 2009

General Decision Number: KS20080018 10/16/2009

Superseded General Decision Number: KS20070063

State: Kansas

Construction Types: Heavy (Heavy and Sewer and Water Line)

Counties: Allen, Bourbon, Cherokee, Crawford, Labette, Montgomery, Neosho, Wilson and Woodson Counties in Kansas.

HEAVY CONSTRUCTION PROJECTS WATER AND SEWER LINE CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/08/2008
1	04/11/2008
2	06/06/2008
3	07/04/2008
4	11/21/2008
5	06/26/2009
6	08/21/2009
7	10/16/2009

* IRON0010-018 04/01/2009

ALLEN (Remainder of County), BOURBON, CRAWFORD (Townships of Arcadia, Arna, Brasilton, Cockrell, Crowsburg, Engle- vale, Farlington, Fox Town, Franklin, Girard, Hepler, Radley, Ringo, Walnut), NEOSHO (NE corner to include townships of Kimball, Stark), WOODSON (NE tip to include the township of Neosha Falls)

Prevailing Wages



- Iowa does not have a state prevailing wage.
- Federal prevailing wage = base rate + fringe
- Can be paid in any combination.
- Overtime is paid after 40 hours in a week and only the base rate is used to calculate wages due.

* IRON0010-018 04/01/2009

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	Rates	Fringes
IRONWORKER.....	\$ 24.50	21.45

* IRON0024-005 06/01/2009

MONTGOMERY (NW Tip), NEOSHO (NW Corner to include the township of Chanute), WILSON (Except SE Corner), WOODSON (Except NE Corner)

Fringe Benefits



- Must also be paid weekly for all hours worked
- Can be paid in cash or through bona fide plan
 - Benefits of a continuous nature: health insurance, pension plans, etc.

Fringe Benefits



- Payments required to fund Social Security, unemployment compensation and workers' compensation programs, as required by law, do not count as fringe benefits.
- A contractor cannot offset the fringe benefit rate by an employee's use of a company vehicle or tool.
- IFA may request details from contractor / subcontractor on their bona fide plans and payments for each employee working on the ARRA project.

Fringe Benefits - Example



- Electrician working on DB project
 - Employer provides medical insurance at \$200 per month.
 - WD requires \$12 plus \$2.50 in fringe benefits or \$14.50/hour
 - Employee works 160 hours a month
 - ✦ $\$200/160 \text{ hours} = \1.25 (credit per hour)
 - ✦ No other benefit provided
 - ✦ Electrician is due: \$13.25 an hour in base rate
 - $\$14.50 - \$1.25 = 13.25$, is remaining balance of applicable prevailing wage that will need to be paid per hour to employee.

Weekly Payroll Reporting



- Payroll and Prevailing Wages
 - Payroll data and Statement of Compliance submitted to IFA (or grant administrator if project has CDBG funds also):
 - ✦ Contractor and subcontractors required to provide weekly records.
 - ✦ Use form WH347 for both payroll and statement of compliance.
 - ✦ Payroll must clearly list specific job classification and wages for each employee and break down the time employee spent in each classification if employee does multiple types of work.

Employee Interviews



- **Employee interviews and spot checks**
 - Conducted by grant administrator, engineer when doing construction inspections, city or IFA
 - IFA will work with city/borrower to identify best person to handle this responsibility based on needs and resources available.
- **EPA Schedule**
 - Within 2 weeks of submission of initial payroll data and 2 weeks prior to estimated completion date.
 - Must notify IFA of date construction begins.
 - Iowa is requesting a waiver from these strict timelines.
- **Interviews**
 - Conduct additional interviews on a frequency based on risk
 - Include “sufficient” number of employees

Employee Interview Form

Standard Form 1445

Way to verify employee is being paid appropriate wage and is classified correctly.

Interviews must be conducted in confidential manner.

Davis-Bacon

LABOR STANDARDS INTERVIEW					
CONTRACT NUMBER #111-111			EMPLOYEE INFORMATION		
NAME OF PRIME CONTRACTOR Contractor AAA			LAST NAME Doe	FIRST NAME John	MI
NAME OF EMPLOYER Contractor AAA			STREET ADDRESS 112233 Main Street		
SUPERVISOR'S NAME			CITY Any City	STATE US	ZIP CODE 00000
LAST NAME Johnson	FIRST NAME John	MI	WORK CLASSIFICATION Water Project	WAGE RATE 12.00	
ACTION					CHECK BELOW
					YES NO
Do you work over 8 hours per day?					<input checked="" type="checkbox"/> <input type="checkbox"/>
Do you work over 40 hours per week?					<input checked="" type="checkbox"/> <input type="checkbox"/>
Are you paid at least time and a half for overtime hours?					<input checked="" type="checkbox"/> <input type="checkbox"/>
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?					<input type="checkbox"/> <input checked="" type="checkbox"/>
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY? Deposit of \$20.00 per week into saving plan					
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW? 9			TOOLS YOU USE General construction tools nail gun, drill, saw, wrench		
DATE OF LAST WORK DAY BEFORE INTERVIEW (yy/mm/dd) 100219					
DATE YOU BEGAN WORK ON THIS PROJECT (yy/mm/dd) 100201					
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE					
EMPLOYEE'S SIGNATURE					DATE (yy/mm/dd) 100222
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME John Doe		DATE (yy/mm/dd) 100222	
INTERVIEWER'S COMMENTS					
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED General construction labor			ACTION (if explanation is needed, use comments section)		YES NO
			IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		<input checked="" type="checkbox"/> <input type="checkbox"/>
			ARE WAGE RATES AND POSTERS DISPLAYED?		<input checked="" type="checkbox"/> <input type="checkbox"/>
FOR USE BY PAYROLL CHECKER					
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
COMMENTS Payroll reflects the \$20.00 per week as "other" deductions					
CHECKER					
LAST NAME Jane	FIRST NAME Jones	MI	JOB TITLE Payroll Admin		
SIGNATURE					DATE (yy/mm/dd) 100224
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable					
STANDARD FORM 1445 (Rev. 12-96) Prescribed by GSA - FPMR (48 CFR) 53.222(g)					

Employee Interview Form



- Employee details
 - Exact work class important to compare to wage determination.
 - Do NOT list full social security number.

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER			EMPLOYEE INFORMATION		
#111-111			LAST NAME	FIRST NAME	MI
NAME OF PRIME CONTRACTOR			Doe	John	
Contractor AAA			STREET ADDRESS		
NAME OF EMPLOYER			112233 Main Street		
Contractor AAA			CITY	STATE	ZIP CODE
SUPERVISOR'S NAME			Any City	US	00000
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION	WAGE RATE	
Johnson	John		Water Project	12.00	

Employee Interview Form



- Number of hours worked per day?
- Work over 40 hours per week?
- Paid at least time and a half for overtime?
- How are fringe benefits received?

ACTION

CHECK BELOW

YES

NO

Do you work over 8 hours per day?

✓

Do you work over 40 hours per week?

✓

Are you paid at least time and a half for overtime hours?

✓

Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?

✓

Employee Interview Form



- Type of deductions made from pay?
- Type of work performed?
- Typical tools used?
- Last day of work before interview?
- Date started work on project?

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

Deposit of \$20.00 per week into saving plan

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?

9

TOOLS YOU USE

General construction tools

nail gun, drill, saw, wrench

DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)

100219

DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)

100201

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

Employee Interview Form



- Make sure to take down notes and confirm information against payroll records provided by employer.

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE			DATE (YYMMDD) 100222
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME John Doe	DATE (YYMMDD) 100222

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED General construction labor	ACTION (If explanation is needed, use comments section)	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?	✓	
	ARE WAGE RATES AND POSTERS DISPLAYED?	✓	

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☒ YES ☐ NO

COMMENTS

Payroll reflects the \$20.00 per week as "other" deductions

Employee Interview Analysis



- Spot checks conducted along with the interviews in cases where risk of mistake and fraud.
- Review representative sample of weekly payroll data (at least twice per contractor/subcontractor)
 - Ensure appropriate wage rates paid
 - Verify fringe benefit plans and payments
 - Verify apprentice and trainee registration and certification
 - Statement of compliance included each week

DBA Documentation at Site



- DBA “Employee Rights” poster – WH 1321
- Wage rates
- Apprentice ratios
 - <http://www.wdol.gov/aam/AAM148.pdf>

Number of Journeymen or Masters	Number of Apprentices Allowed
0-2	0
3-5	1
6-8	2
9-11	3

Job Site Signage



- Post DBA poster and wage rates
 - Notice to All Employees (WH1321)
- Must be prominent, protected, and accessible
- <http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>
- Also available on IFA website.

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321 (Revised April 2009)

Why Important? – Debarment/Enforcement



- Contractors that fail to follow these labor standards will be debarred from government contracts.
 - Statements of Compliance certify that contractor is following the standards and putting forth accurate information.
 - Debarred for a willful or aggravated violation, not mistakes.
 - Suspended from government contracts for up to 3 years.
- [Federal Debarment Database: www.epls.gov](http://www.epls.gov)

Common Questions



AMERICAN RECOVERY & REINVESTMENT ACT (ARRA)

What If...



- I notice a discrepancy in payroll or other documentation?
- I miss conducting an employee interview?
- A contract is executed without the DBA clause or wage determination?
- I discover that a contractor is on the debarment list?

Common Questions



- Do I pay city/utility employees prevailing wages?
- When should contractors begin submitting weekly payroll?
- How do I verify prevailing wages for an employee who is working on the ARRA project and a non-ARRA project?
- What if a job class I need is missing from the wage determination?
- What if construction stops for a week?

Common Questions



- Do I apply the wage determination to projects that involve only equipment purchases?
- How do I determine wage determinations for projects that cross multiple counties?

Additional Resources



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

Reference Links



- **State of Iowa – Iowa Finance Authority – State Revolving Fund** – <http://www.iowasrf.com/>
 - **DOL Davis-Bacon Act Fact Sheet:** <http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
 - **Wage & Hour Division:** <http://www.dol.gov/esa/whd> and <http://www.dol.gov/esa/whd/recovery/>
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- **DBA reference material:** <http://www.gpo.gov/davisbacon/referencemat.html>
 - **Prevailing Wage Resource Book:** <http://www.dol.gov/esa/whd/recovery/pwrb/toc.htm>
 - **Performing a review of certified payrolls:** <http://www.dol.gov/esa/whd/forms/wh347.pdf>
 - **Labor Interviews:**
[http://contacts.gsa.gov/webforms.nsf/o/12BF5DoE2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/o/12BF5DoE2DC4484685256CBC0062F375/$file/sf1445.pdf)
 - **Administrative Review Board:** <http://www.dol.gov/arb>
 - **Debarred Bidders List:** <http://www.epls.gov>

Davis-Bacon Fact Sheets



Forms and fact sheets on a variety of Davis-Bacon topics are available on the Iowa SRF website at:

www.IowaSRF.com

or by contacting:

LYNZEY THARP

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515.725.4955

Questions?



IOWA SRF PROGRAM SUPPORT

GENERAL QUESTIONS

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